

REDACTED FOR PUBLIC INSPECTION

Federal Communications Commission

DA 15-958

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Application of AT&T Mobility Spectrum LLC and) WT Docket No. 14-167
Kaplan Telephone Company, Inc.)
)
For Consent To Assign Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 2015

Released: August 26, 2015

By the Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Kaplan for Commission consent to the assignment from Kaplan to AT&T of two Lower 700 MHz C Block licenses and a Cellular B Block license covering all or parts of two local market areas in Louisiana. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or

more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its low-band spectrum holdings in these two local market areas, and would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in these markets, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely, such as increased network quality and a better user experience. Thus, based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

II. BACKGROUND

A. Description of the Applicants

2. AT&T Inc. (together with its indirect and wholly-owned subsidiary AT&T Mobility Spectrum LLC, "AT&T"), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² As of December 31, 2014, AT&T reported more than 120 million wireless subscribers and approximately \$74 billion in wireless service and equipment revenues, which accounted for approximately 56 percent of AT&T's total revenues.³ AT&T's nationwide wireless network currently covers approximately 306 million people, or approximately 99 percent of the population of the United States.⁴ Kaplan Telephone Company, Inc. ("Kaplan," and together with AT&T, the "Applicants") is a wireless, broadband, security, cable TV, and digital telephone service provider that currently serves its Louisiana wireless subscribers using its cellular spectrum.⁵ Kaplan provides mobile wireless service under the brand names PACE or KTC PACE in a single parish in rural Louisiana.⁶

B. Description of the Transaction

3. On August 19, 2014, AT&T and Kaplan filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the "Act"),⁷ seeking Commission consent to assign two Lower 700 MHz C Block licenses and a Cellular B Block license to an indirect, wholly-owned subsidiary of AT&T.⁸ In the instant transaction, AT&T proposes to acquire 12 to 37 megahertz of spectrum in nine

¹ See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6240 ¶¶ 286-88 (2014) ("*Mobile Spectrum Holdings Report and Order*"), *recon. denied, Order on Reconsideration*, FCC 15-79 (rel. Aug. 11, 2015).

² See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

³ See AT&T Inc., SEC Form 10-K, Exhibit 12, at 4, 5 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

⁴ Mosaik Solutions Data ("Mosaik"), July 2014.

⁵ See Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. for Consent To Assign Licenses, ULS File No. 0006423784 ("Application"), Exhibit 1 – Public Interest ("Public Interest Statement") (filed Aug. 19, 2014) at 5; KTC Pace, available at <http://www.ktccpace.com/AboutUs.asp>.

⁶ See Response of Kaplan to the General Information Request Dated October 29, 2014, WT Docket No. 14-167, at 2 (Nov. 12, 2014) ("Kaplan Information Request Response").

⁷ 47 U.S.C. § 310(d).

⁸ See Public Interest Statement at 1.

parishes covering all or parts of two Cellular Market Areas (“CMAs”) in parts of Louisiana.⁹ Post-transaction, AT&T would hold 125 to 165 megahertz of spectrum in total, and 55 megahertz of below-1-GHz spectrum in these two CMAs.¹⁰ The proposed transaction involves the assignment of spectrum only; no customers would be transferred. According to the Applicants, Kaplan will continue to provide service to its subscribers with no change in the terms and conditions of service over an MVNO platform in its current service area.¹¹

4. The Applicants assert that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services to the public in the geographic areas authorized under the Kaplan licenses.¹² The Applicants further contend that the acquisition of this spectrum would provide AT&T with 24 contiguous megahertz of Lower 700 MHz spectrum that would support a 10×10 MHz Long-Term Evolution (“LTE”) deployment, and would, according to the Applicants, improve spectral efficiency, increase network capacity, and enable AT&T to offer faster, higher quality services to its customers in the affected markets.¹³

C. Transaction Review Process

5. On August 19, 2014, the Applicants filed the Application. On September 30, 2014, the Commission released a public notice, which announced the acceptance of the Application for filing and established a pleading cycle.¹⁴ The *Accepted for Filing Public Notice* explained that the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) would treat the proposed increase in below-1-GHz spectrum holdings as an “enhanced factor” in its review pursuant to the *Mobile Spectrum Holdings Report and Order*.¹⁵ On October 29, 2014, the Bureau extended the pleading cycle, with petitions due November 26, 2014, oppositions due December 8, 2014, and replies due December 15, 2014.¹⁶ No petitions were filed in response to the *Accepted for Filing Public Notice*. In addition, on October 9, 2014, a number of parties filed a letter in the Mobile Spectrum Holdings docket regarding several pending transactions proposed by AT&T that implicate the Commission’s enhanced factor review for certain proposed below-1-GHz transactions.¹⁷

⁹ This includes 12 megahertz of Lower 700 MHz C Block spectrum in the two parishes in CMA 174 (Lafayette, Louisiana) and seven out of ten parishes in CMA 458 (Louisiana 5 – Beauregard), as well as 25 megahertz of Cellular B Block spectrum in Vermilion Parish in Louisiana 5 – Beauregard.

¹⁰ See AT&T Inc. and Kaplan Telephone Company, Inc. Seek FCC Consent to the Assignment of Cellular and Lower 700 MHz Licenses, WT Docket No. 14-167, *Public Notice*, 29 FCC Rcd 11602 (WTB 2014) (“*Accepted for Filing Public Notice*”).

¹¹ As a result, the Applicants maintain that “no subscriber transition issues are implicated as a result of the proposed transaction.” See Public Interest Statement at 5. See also n.69 *infra*.

¹² See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 11602.

¹³ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 11602.

¹⁴ See generally *Accepted for Filing Public Notice*, 29 FCC Rcd 11602.

¹⁵ See *Accepted for Filing Public Notice*, 29 FCC Rcd at 11602-3, citing *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88.

¹⁶ See generally Pleading Cycle Extended for Proposed Assignment to AT&T from Kaplan Telephone Company, Inc. of Cellular and Lower 700 MHz Licenses, WT Docket No. 14-167, *Public Notice*, 29 FCC Rcd 13482 (WTB 2014) (“*Extension Public Notice*”). On the Bureau’s own motion, it extended the pleading dates “[t]o provide interested parties time to review responses to the *Information Requests*, and to facilitate the development of a full record.” See *id.*

¹⁷ See generally Letter from T-Mobile USA, Inc., Sprint Corporation, Writers Guild of America, West, Open Technology Institute, New America Foundation, Public Knowledge, Computer & Communications Industry (continued....)

6. On October 29, 2014, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data.¹⁸ Also, on October 29, 2014, pursuant to section 308(b) of the Act,¹⁹ the Bureau sent letters to AT&T and Kaplan requesting the submission of written responses and supporting documentation by November 12, 2014, to specific inquiries related to the proposed transaction.²⁰ The Bureau also released a *Joint Protective Order* to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.²¹

III. PUBLIC INTEREST FRAMEWORK

A. Standard of Review

7. Pursuant to section 310(d) of the Act,²² we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.²³ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,²⁴ other applicable statutes, and the Commission’s rules, including whether the applicants are qualified to hold licenses.²⁵ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by

(Continued from previous page)

Association, Free Press, and COMPTTEL to Chairman Thomas Wheeler, WT Docket No. 12-269, dated Oct. 9, 2014 (“Increased Below-1-GHz Spectrum Aggregation Letter”). See also ¶ 19 *infra*.

¹⁸ See generally Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. for Consent To Assign Cellular and Lower 700 MHz Licenses, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-167, CC Docket No. 99-200, *Public Notice*, 29 FCC Rcd 13462 (WTB 2014); Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. for Consent To Assign Licenses, WT Docket No. 14-167, *NRUF/LNP Protective Order*, 29 FCC Rcd 13455 (WTB 2014).

¹⁹ 47 U.S.C. § 308(b).

²⁰ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T Inc., WT Docket No. 14-167 (WTB rel. Oct. 29, 2014) (“*AT&T Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Carl A. Turnley, Kaplan Telephone Company, Inc., WT Docket No. 14-167 (WTB rel. Oct. 29, 2014) (“*Kaplan Information Request*”).

²¹ See generally Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. for Consent To Assign Licenses, WT Docket No. 14-167, *Joint Protective Order*, 29 FCC Rcd 13445 (WTB 2014).

²² 47 U.S.C. § 310(d).

²³ See, e.g., Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

²⁴ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741 ¶ 13.

²⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.²⁸

8. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²⁹ The Commission and the Department of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission’s competitive analysis under the public interest standard is somewhat broader.³⁰ For example, the Commission considers whether a proposed transaction would enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant markets.³¹ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.³² Finally, the Commission’s public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.³³

B. Qualifications of the Applicants

9. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.* For example, the Commission set out in the *Mobile Spectrum Holdings Report and Order* its anticipation “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.” The Commission also stated that “we anticipate that we likely would have even greater concerns where the proposed transaction would result in an assignee or transferee that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.” *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-87. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8.

²⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15.

³⁰ See *id.*

³¹ See *id.*

³² 47 U.S.C. § 309(e); see also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

³³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16; Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order*, 27 FCC Rcd 10698, 10711 ¶ 30 (2012) (“*Verizon Wireless-SpectrumCo Order*”).

qualifications.³⁴ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction – both the assignee and the assignor – meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission’s rules.³⁵ As an initial matter, we note that no issues were raised in the record with respect to the basic qualifications of Kaplan or AT&T.³⁶ In addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.³⁷ We find therefore that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Kaplan or AT&T.³⁸

IV. POTENTIAL PUBLIC INTEREST HARMS

A. Competitive Overview

10. In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.³⁹ The Commission undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets,⁴⁰ and focuses initially on markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both, and thereby could lead to competitive harm.⁴¹ In its analysis, the Commission has used an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis.⁴² As set out in various transactions orders, however, the Commission has not limited its consideration of potential competitive harms solely to markets identified by its initial screen if it encounters other factors that may bear on the public interest inquiry.⁴³

³⁴ 47 U.S.C. §§ 308, 310(d); *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10444 ¶ 28 (2013) (“*Alaska Wireless Order*”).

³⁵ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; *Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28.

³⁶ The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29. *See also AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

³⁷ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19.

³⁸ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

³⁹ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. *See also AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴⁰ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; Application of AT&T Inc. and Qualcomm Incorporated for Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17602 ¶ 31 (2011) (“*AT&T-Qualcomm Order*”). *See also AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴¹ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. *See also AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴² *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47 ¶ 33, 10450 ¶ 42. *See also AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

⁴³ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-11 ¶¶ 49-50. *See also AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39.

11. In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its initial spectrum screen and case-by-case review to evaluate the likely competitive effects of increased spectrum aggregation through secondary market transactions.⁴⁴ In addition to modifying the spectrum screen as explained below, the *Mobile Spectrum Holdings Report and Order* requires that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” for case-by-case review if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.⁴⁵ The Commission reached this conclusion primarily because low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,⁴⁶ and the two leading nationwide providers hold most of the low-band spectrum available today.⁴⁷ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.⁴⁸ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new or innovative services.⁴⁹

12. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”⁵⁰ The Commission stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.⁵¹ The Commission concluded that careful consideration of the likely effects of increased

⁴⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

⁴⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. The Commission applied this below-1-GHz review for the first time in the recently released *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

⁴⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

⁴⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57 ¶ 46, 6164 ¶ 60. The *Mobile Spectrum Holdings Report and Order* states that “in many service areas currently suitable and available below-1-GHz spectrum is disproportionately concentrated in the hands of larger nationwide service providers: the two largest providers hold 73 percent of the low-band spectrum.” *Id.*, 29 FCC Rcd at 6168 ¶ 68.

⁴⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

⁴⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14; Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign and Lease AWS-1 and Lower 700 MHz Licenses, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12878, 12893-94 ¶¶ 40-41 (WTB 2013) (“*AT&T-Verizon Wireless-Grain Order*”); *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁵⁰ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287.

⁵¹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

aggregation of low-band spectrum under this standard will help ensure that further concentration of such spectrum will not adversely affect competition either in particular local markets or on a broader regional or national level.⁵²

13. When considering the potential competitive effects of increased spectrum aggregation as a result of a proposed transaction, the Commission has considered whether there would be an increased likelihood that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and also whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.⁵³ We evaluate below the likely competitive effects of an increase in spectrum holdings in the two CMAs involved in this proposed transaction,⁵⁴ including, in particular, the increased aggregation of below-1-GHz spectrum by AT&T.⁵⁵

B. Market Definitions

14. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁵⁶ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

15. *Product Market.* In recent transaction orders, the Commission has determined that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁵⁷ Consistent with past Commission determinations, we find that this product market definition continues to encompass the mobile voice and data services that are provided today, and is sufficiently flexible to reflect emerging, next-generation wireless services.⁵⁸ We therefore find that it is in the public interest to retain the current product market definition.

16. *Geographic Market(s).* The Commission has found in recent transaction orders that the relevant geographic markets for certain wireless transactions generally are local,⁵⁹ but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction

⁵² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 288.

⁵³ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent To Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4252-53 ¶ 34 (2011). See also *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12887 ¶ 20.

⁵⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2745-46 ¶ 21; Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control of and Assign Licenses and Authorizations, WT Docket No. 13-54, *Memorandum Opinion and Order*, 28 FCC Rcd 13670, 13681 ¶ 19 (WTB, IB 2013) ("*AT&T-ATN Order*").

⁵⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88.

⁵⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34.

⁵⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35. See also *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

⁵⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2747-48 ¶ 26. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225 ¶ 237.

⁵⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748-49 ¶ 29.

exhibits certain national characteristics that provide cause for concern.⁶⁰ We see no reason to evaluate the likely competitive effects of the instant transaction at the national level. The Applicants are seeking Commission approval to the proposed assignment of 12 to 37 megahertz of spectrum in nine parishes covering all or parts of two CMAs that account only for well under one percent of the population of the United States. We find that any potential competitive harms arising from the proposed transaction would be limited to these two local markets.

17. *Input Market for Spectrum.* When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the acquiring firm's post-transaction holdings of spectrum that is "suitable"⁶¹ and "available"⁶² in the near term for the provision of mobile telephony/broadband services.⁶³ The Commission has determined in prior transaction orders that the following bands, or portions thereof, meet this definition of suitable and available spectrum, and should be included in the input market: cellular, broadband PCS, SMR, 700 MHz band spectrum, Advanced Wireless Services in the 1710-1755 and 2110-2155 MHz band ("AWS-1," on a market-by-market basis), Broadband Radio Service spectrum ("BRS," on a market-by-market basis), and Wireless Communications Service ("WCS") spectrum.⁶⁴ Further, in the *Mobile Spectrum Holdings Report and Order*, the Commission determined that the following spectrum bands are suitable and available and also should be included: the 600 MHz band (at the conclusion of the Incentive Auction), Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz spectrum bands ("AWS-4"), H Block, additional BRS spectrum, the majority of the EBS spectrum, and the Advanced Wireless Services-3 ("AWS-3") band (on a market-by-market basis as it becomes "available").⁶⁵

18. *Market Participants.* In previous transactions, the Commission has considered only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants.⁶⁶ Consistent with the *Mobile Spectrum Holdings Report and Order*, we will also consider facilities-based entities providing mobile

⁶⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36. See also *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238.

⁶¹ Suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its use for mobile services. See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 71.

⁶² Spectrum is considered available if it is "fairly certain that it will meet the criteria for suitable spectrum in the near term." See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 71.

⁶³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116-17 ¶ 21; *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70.

⁶⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶ 72.

⁶⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70.

⁶⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41. See also *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions, but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23 n.78; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 37.

telephony/broadband services using AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.⁶⁷

C. Competitive Effects of the Proposed Transaction

19. *Record.* The Applicants argue that the proposed transaction will have no adverse competitive effects, asserting that it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁶⁸ and that no subscriber transition issues are implicated as a result of the proposed transaction.⁶⁹ No petitions to deny or comments were received, although, as noted above, a number of parties filed a letter in the Mobile Spectrum Holdings rulemaking proceeding regarding the Commission's enhanced factor review of below-1-GHz spectrum transactions, although this letter did not address any factors specific to a particular proposed transaction.⁷⁰

20. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁷¹ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") and the change in the HHI as a result of the proposed transaction.⁷² The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁷³ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible

⁶⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6135 ¶ 4. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23.

⁶⁸ See Public Interest Statement at 4. See also Response of AT&T to General Information Request Dated October 29, 2014, WT Docket No. 14-167, at 14 (Nov. 12, 2014) ("AT&T Information Request Response").

⁶⁹ See Public Interest Statement at 5. See also AT&T Information Request Response at 14. Kaplan serves a very limited number of subscribers, approximately [REDACTED], in one parish in Louisiana 5 – Beauregard. According to the Applicants, these subscribers will not be transferred to AT&T, but will be transitioned to an MVNO platform. Specifically, Kaplan represents that it will transition its customers to an MVNO platform [REDACTED], where they will continue to receive service from Kaplan on the same terms and conditions. See Public Interest Statement at 5; Kaplan Information Request Response at 4.

Kaplan asserts that its customers will also benefit from a number of specific transitional safeguards. In particular, Kaplan states that [REDACTED]. See Kaplan Information Request Response at 4-5. See also Kaplan Confidential Exhibit 2.a.

⁷⁰ See generally Increased Below-1-GHz Spectrum Aggregation Letter. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 28.

⁷¹ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57 ¶ 46, 6240 ¶¶ 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121-23 ¶¶ 31-35.

⁷² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁷³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42. The current total amount of spectrum that is suitable and available is 580.5 megahertz, which yields a trigger of 194 megahertz, assuming that AWS-1 and BRS/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251, n.667.

competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁷⁴

21. In the transaction before us, AT&T would acquire 12 to 37 megahertz of spectrum in nine parishes covering all or parts of two CMAs in parts of Louisiana. As the instant transaction does not result in the acquisition of wireless business units and customers in either market, we do not apply the initial HHI screen. Next, examining each market on a parish-by-parish basis does not result in either market triggering the total spectrum screen. We do find, however, after review on a parish-by-parish basis, that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in at least one parish in both CMA 174 (Lafayette, Louisiana) and CMA 458 (Louisiana 5 – Beauregard), and therefore we look more closely at the potential competitive effects these holdings may have.⁷⁵

22. *Market-by-Market Review.* In our analysis, we evaluate whether the acquisition of this below-1-GHz spectrum by AT&T likely would harm competition in Lafayette or in Louisiana 5 – Beauregard. Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁷⁶

23. Lafayette is a non-rural market of approximately 274,000 people, with a population density of 269 people per square mile.⁷⁷ The four nationwide service providers all have a significant market share: AT&T is the leading service provider in the market, and holds approximately [REDACTED] percent of the market, while Verizon Wireless, Sprint, and T-Mobile have market shares of approximately [REDACTED] percent, respectively.⁷⁸ Post-transaction, AT&T would hold 125 megahertz of spectrum, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers hold 72 to 175 megahertz of spectrum. With respect to below-1-GHz spectrum holdings, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz, and DISH holds 6 megahertz.⁷⁹ In terms of population and land area coverage, the four

⁷⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. See also, e.g., *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁷⁵ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19 ¶¶ 24-25.

⁷⁶ We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database, network coverage from Mosaik July 2014 data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29 n.98.

⁷⁷ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, Report and Order*, 19 FCC Rcd 19078, 19087-88 ¶¶ 11-12 (2004).

⁷⁸ The HHI is [REDACTED].

⁷⁹ In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

nationwide service providers have significant 3G coverage.⁸⁰ AT&T's 3G network covers 100 percent of the population and the land area in this CMA,⁸¹ while the comparable 3G network coverage percentages are 100 percent and approximately 77 percent for Verizon Wireless, approximately 99 percent and 61 percent for Sprint, and 100 percent and approximately 90 percent for T-Mobile. In addition, AT&T covers 100 percent of the population and the land area with HSPA+, and 100 percent of the population and approximately 76 percent of the land area with LTE. Further, Verizon Wireless, Sprint, and T-Mobile all cover at least 95 percent of the population with LTE, while the land area coverage percentages are approximately 78 percent, 67 percent, and 50 percent, respectively.

24. Louisiana 5 – Beauregard is a rural market of approximately 402,000 people, with a population density of 46 people per square mile. Three of the four nationwide service providers have a significant market share: AT&T is the leading service provider in the market, and holds approximately [REDACTED] percent of the market, while Verizon Wireless and Sprint have market shares of approximately [REDACTED] percent, respectively.⁸² Post-transaction, AT&T would hold 125 to 165 megahertz of spectrum, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers hold 42 to 183 megahertz of spectrum. With respect to below-1-GHz spectrum holdings, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz (in nine out of ten parishes covering approximately 94 percent of the population of the CMA),⁸³ and DISH holds 6 megahertz.⁸⁴ In terms of population and land area coverage, three of the four nationwide service providers, AT&T, Verizon Wireless, and Sprint, each have significant 3G coverage. AT&T covers approximately 100 percent of the population and the land area with its 3G network,⁸⁵ while the comparable 3G network coverage percentages are approximately 100 percent and 97 percent for Verizon Wireless, and approximately 92 percent and 76 percent for Sprint. T-Mobile has significant 3G land area coverage (approximately 67 percent) and covers approximately 57 percent of the population.⁸⁶ In addition, AT&T covers 100 percent of the population and the land area with HSPA+, and approximately 100 percent of the population and 98 percent of the land area with LTE, while the comparable population and land area percentages are approximately 100 percent and 97 percent for Verizon Wireless, and approximately 71 percent and 62 percent for Sprint.

25. We find that, notwithstanding the fact that AT&T would hold more than one-third of the below-1-GHz spectrum post-transaction in both of these local markets, the likelihood of competitive harm is low⁸⁷ when evaluating the particular factors ordinarily considered.⁸⁸ In addition to AT&T, in non-rural

⁸⁰ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 ¶ 31 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 ¶ 81 n.279; *AT&T-ATN Order*, 28 FCC Rcd at 13692 ¶ 43 n.123.

⁸¹ We note that Kaplan's 3G network is not significant: Kaplan covers approximately 49% of the population and 29% of the land area.

⁸² T-Mobile has some market presence, with a market share of approximately [REDACTED]%. The HHI is [REDACTED].

⁸³ AB Spectrum holds the Lower 700 MHz A Block spectrum in Pointe Coupee Parish, covering approximately 6% of the population of this CMA.

⁸⁴ In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

⁸⁵ We note that Kaplan's 3G network is not significant: Kaplan covers approximately 23% of the population and 22% of the land area.

⁸⁶ We note that T-Mobile has some LTE deployment, currently covering approximately 15% of the population, but less than 10% of the land area.

⁸⁷ The Commission stated in the *Mobile Spectrum Holdings Report and Order* that, in these cases, it anticipated "that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed (continued....)

Lafayette, the three other nationwide service providers, Verizon Wireless, Sprint, and T-Mobile, each have significant market shares, while in rural Louisiana 5 – Beauregard, Verizon Wireless and Sprint have significant market shares, and T-Mobile has some market presence. Further, Verizon Wireless, Sprint, and T-Mobile each have significant 3G and LTE population and land area coverage in non-rural Lafayette, while in Louisiana 5 – Beauregard, Verizon Wireless and Sprint have a significant 3G network and T-Mobile covers a significant part of the land area, as well as close to 60 percent of the population. Moreover, both Verizon Wireless and Sprint also have significant LTE population and land area coverage in Louisiana 5 – Beauregard. Further, the three other nationwide service providers all have access to low-band spectrum. In addition, as detailed in the footnote below, other rival service providers were provided with the opportunity to acquire Kaplan’s below-1-GHz spectrum on the secondary market, but did not choose to do so.⁸⁹ We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in these two local markets, and is unlikely to raise rivals’ costs. For these reasons, we find that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in these two local markets.

V. POTENTIAL PUBLIC INTEREST BENEFITS

26. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁹⁰ As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, such as the quicker deployment of a more robust LTE network than would be likely otherwise.

A. Analytical Framework

27. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.⁹¹ First, the claimed benefit must be transaction-specific.⁹² Second, the claimed benefit must be verifiable.⁹³ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost,” as, in general, reductions in marginal cost are more likely to result in lower prices for consumers.⁹⁴ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”⁹⁵ Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things,

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transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.” *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. See also ¶ 12 *supra*. The potential public interest benefits associated with the acquisition of this low-band spectrum by AT&T are evaluated in section V. below.

⁸⁸ See ¶ 22 *supra*. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

⁸⁹ Kaplan states that its broker Alpina Capital, LLC (“Alpina”), requested initial offers for the Kaplan properties from [REDACTED] on August 13, 2014, Kaplan and AT&T executed a final license purchase agreement. See Kaplan Information Request Response at 3-4.

⁹⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

⁹¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132.

⁹² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87.

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.⁹⁶ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.⁹⁷ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁹⁸ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁹⁹

B. Potential Benefits and Evaluation

28. *Potential Benefits.* The Applicants assert that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services in these two markets.¹⁰⁰ In particular, the Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment,¹⁰¹ while its acquisition of the cellular license would allow it to combine this license with its existing cellular spectrum holdings within the relevant CMA, leading to a seamless deployment.¹⁰²

29. AT&T asserts that it typically would launch LTE in a 5×5 megahertz configuration where only a single 12 megahertz block of Lower 700 MHz B Block or C Block spectrum is available, and would launch LTE in a 10×10 megahertz configuration in areas where both the Lower 700 MHz B Block and C Block are available. Where Lower 700 MHz spectrum is not available, AT&T’s initial LTE deployments would use AWS-1 spectrum and/or other spectrum bands.¹⁰³ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks¹⁰⁴ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.¹⁰⁵

30. According to AT&T, it is already operating a wireless network on B Block cellular spectrum throughout Louisiana 5 – Beauregard, with the exception of Vermilion Parish.¹⁰⁶ Its acquisition

⁹⁶ See *id.*

⁹⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-4 ¶ 132.

⁹⁸ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2794 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88.

⁹⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

¹⁰⁰ See Public Interest Statement at 3.

¹⁰¹ See Public Interest Statement at 3. See also AT&T Information Request Response at 8-10.

¹⁰² See AT&T Information Request Response at 5, 10.

¹⁰³ See AT&T Information Request Response at 4-5; Letter from Eric W. DeSilva, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-199, dated July 6, 2015.

¹⁰⁴ See AT&T Information Request Response at 6-7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. See *id.* at 7.

¹⁰⁵ See AT&T Information Request Response at 7. AT&T cites the 10×10 megahertz LTE deployment’s greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. See AT&T Information Request Response at 6, 8-9. See also AT&T Exhibits ATT-KAPLAN000001, ATT-KAPLAN000006, and ATT-KAPLAN000042.

¹⁰⁶ See AT&T Information Request Response at 5, 10. AT&T asserts that because it currently does not have cellular spectrum in Vermilion Parish, [REDACTED]. See *id.* at 5.

of the cellular license in Vermilion Parish, AT&T asserts, would enable it to combine its existing B Block cellular spectrum in this market with Kaplan's cellular spectrum, creating a seamless deployment for subscribers, whose devices will be able to stay on the same band throughout the market.¹⁰⁷ More generally, AT&T maintains that each of the three licenses to be acquired in the proposed transaction is uniquely situated either to fill a gap in AT&T's coverage or to enhance and extend AT&T's existing services.¹⁰⁸

31. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits. We find that combining AT&T's existing B Block cellular spectrum in Louisiana 5 – Beauregard with Kaplan's cellular license would likely lead to certain improvements in the quality of service to its customers. In addition, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time. We further find that by adding this low-band spectrum, AT&T would be able to expand, in the near future, its LTE service offerings on contiguous spectrum, which has the potential to enable AT&T to achieve greater spectral efficiency and consistently greater throughput.¹⁰⁹ Thus, because of AT&T's acquisition of the Lower 700 MHz spectrum in the affected markets, customers are likely to benefit in the immediate future from improved throughput performance, resulting in a better user experience.

VI. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

32. In the proposed transaction, AT&T would increase its low-band spectrum holdings, and would hold more than one-third of the low-band spectrum in both Lafayette and Louisiana 5 – Beauregard post-transaction. As discussed herein, the *Mobile Spectrum Holdings Report and Order* determined that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it “anticipate[d] that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”¹¹⁰

33. We have reviewed the Applicants' initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened in either local market, and thus, that the likelihood of competitive harm is low in these two markets. Further, we find that the record provides general support for the Applicants' claims, and under our sliding scale approach, the likelihood of harm is low and the potential public interest benefits outweigh the harms. Thus, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

¹⁰⁷ See AT&T Information Request Response at 5, 10.

¹⁰⁸ See AT&T Information Request Response at 10. AT&T maintains that the benefits associated with the Kaplan spectrum cannot be replicated through the acquisition of any other spectrum in these markets. See *id.*

¹⁰⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53, n.160; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized the relative spectral inefficiency of a 5×5 megahertz configuration for LTE. See *id.*

¹¹⁰ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

VII. ORDERING CLAUSES

34. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of licenses held by Kaplan Telephone Company, Inc. to AT&T Mobility Spectrum LLC is GRANTED.

35. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

36. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau